

California Code of Regulations

Title 20, Division 2

Chapter 7.

Article 2. Disclosure of Commission Records.

§2503. Construction and Definitions.

(a) This Article implements the California Public Records Act (Section 6250 et seq. of the Government Code) and shall be construed in a manner consistent with that Act.

(b) For purposes of this Article the definitions in the California Public Records Act, the definitions in Section 1302 of Article 1 of Chapter 3, the definitions in Section 1341 of Article 2 of Chapter 3, and the following definitions shall apply:

(1) "Private third party" means any person other than a federal, state, regional, or local governmental body or a person under contract to such a governmental body.

(2) "Confidential record" means a record ~~which that~~ has been determined to be confidential pursuant to Section 2505 or 2506 of this Article.

(3) "Applicant" means a private third party requesting that the Commission ~~to keep~~ a record confidential pursuant to Section 2505 of this Article.

(4) ~~"Application" means a request, pursuant to Section 2505, that the Commission keep a record confidential.~~

(~~54~~) "Petitioner" means a person ~~requesting seeking~~ to inspect or copy a confidential record pursuant to Section 2506 of this Article.

(~~65~~) "Petition" means a request ~~from a petitioner, pursuant to Section 2506, seeking~~ to inspect or copy a confidential record, pursuant to Section 2506 of this Article.

(~~76~~) "Fuel Price" means, ~~for a specific fuel type~~, fuel cost divided by fuel use expressed in dollars, for a specific fuel type.

(~~87~~) "Masked" means, ~~with regard to data, that the data has been blanked out, blocked out, or blackened so that the data is unrecognizable or unreadable but is not limited to, customer, business, or cultural data that has been modified to limit the risk of disclosure of confidential information. Methods of data modification may include, but are not limited to, suppression of data, rounding, swapping of values between like respondents, replacement of data with group averages, grouping of categories, and addition of random values.~~

(98) "Large UDC" means any UDC that has experienced a peak demand of 1000 megawatts or more in the each of the two calendar years preceding the applicable filing date.

(409) "Small UDC" means any UDC ~~that is not~~ not included in the definition of Large UDC.

(4110) "Large LDC" means any LDC that has delivered 100 billion cubic feet of natural gas per year in each of the two calendar years preceding the applicable filing date.

(4211) "Small LDC" means any LDC not included in the definition of ~~that is not a~~ Large LDC.

(4312) "Survey Response" means the answers to survey questions provided by ~~individual~~ persons or companies.

(4413) "Aggregated" means, ~~with regard to data,~~ that data is summed, averaged, or otherwise combined to limit the risk of disclosure of confidential information generally accepted and documented statistical methods have been applied to the data to limit the risk of disclosure of the identity of, or information about, individual customers or survey respondents.

(14) "Freedom of Information Act" is contained at Title 5 United States Code Section 552.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Sections 6250 et seq., Government Code.

HISTORY

1. Amendment of subsections (a) and (b), repealer of subsections (b)(1) and (b)(2), subsection renumbering, and amendment of newly designated subsection (b)(2) and Note filed 7-6-98; operative 8-5-98 (Register 98, No. 28).

2. Amendment of subsection (b) and new subsections (b)(7)-(b)(14) filed 2-23-2001; operative 2-23-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 8).

§2505. Designation of Confidential Records.

(a) Third Parties.

(1) Any private third party giving custody or ownership of a record to the Commission shall ~~indicate any desire~~ specify that if it is to be designated a

confidential record and not publicly disclosed. ~~Failure to so indicate at the time the record is submitted to the Commission is not a waiver of the right to request confidentiality later; however, if the Commission releases a record to a member of the public after it has been submitted but before a request for confidentiality has been received, the Commission cannot thereafter keep the record confidential. Although the record itself shall remain confidential during the application process, subject to the provisions of Section 2507(b), the application itself is a public document.~~ An application for confidential designation shall:

(A) be on a sheet or sheets separate from, but attached to, the record;

(B) specifically indicate those parts of the record ~~which~~ that should be kept confidential;

(C) state the length of time the record should be kept confidential, and ~~provide~~ justification for the length of time;

(D) cite and discuss the provisions of the Public Records Act or other law ~~which~~ that allow the Commission to keep the record confidential. If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of ~~the~~ that advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;

(E) state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated ~~with other information~~ or masked, the application shall justify why it cannot;

(F) state ~~whether and~~ how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;

(G) contain the following certification executed by the person primarily responsible for preparing the application:

1. "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge." and

2. State Where ~~whether~~ the applicant is a company, firm, partnership, trust, corporation, or other business entity, or an organization or association, ~~the certification shall also~~ and

3.6 State that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization, or association.

(H) If the record contains information ~~which that~~ the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, the applicant shall address the items in ~~Section 2505(a)(1) (A) through (F) of this subsection~~ to the greatest extent possible and shall explain the demand or request made by the original party and the reasons expressed by the original party. If the basis of an application for a confidential designation is an order or decision of another public agency ~~that the information is entitled to confidential treatment under~~ pursuant to the Public Records Act or the Freedom of Information Act, the application shall include only a copy of the decision or order and an explanation of its applicability ~~to the information for which confidential treatment is sought, and t~~ The Executive Director shall consult with that agency ~~prior to~~ before issuing a determination.

(2) ~~An improper deficient~~ or incomplete application shall be returned to the applicant with a statement of its defects. The record or records for which confidentiality was requested shall not be disclosed for fourteen days after return of the application to allow a new application to be submitted except as provided in Section 2507(b) of this Article.

(3) Executive Director's Determination.

(A) The Executive Director shall, after consulting with the Chief Counsel, determine if an application for confidential designation should be granted. ~~An application shall be granted unless T~~ the applicant has ~~failed to make any reasonable claim~~ the burden of proof in making a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.

The Executive Director or the General Chief Counsel may, within fourteen days after receipt of an application for confidential designation, require the applicant to submit any information that is missing from the application. If the missing information is not submitted within fourteen days of receipt of the request by the Executive Director or General Chief Counsel, the Executive Director ~~he or she~~ may deny the application. ~~The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.~~

(B) An appeal of a decision to deny the application shall be filed within fourteen days of the Executive Director's decision, and the Commission shall issue a decision on the appeal within four weeks of the filing of the appeal.

~~(C) After a denial of an application or appeal has been denied, the information sought to be designated confidential shall not be available for inspection or copying for a period of fourteen days, or, in the event that the applicant files an appeal with the Commission, within fourteen days of the Commission decision on the appeal, provided however, that any request to copy or inspect a document which is the subject of a pending application shall be subject to the provisions of Sections 2506 and 2507(b). An appeal shall be filed within fourteen days of the Executive Director's decision and the Commission shall issue a decision on the appeal within four weeks of the filing of the appeal.~~

~~(4) Repeated Applications for Confidential Designation. If an applicant's prior application for confidential designation of substantially similar information has been granted pursuant to Section 2505, an application for confidential designation need contain only a certification, pursuant to Section 2505(a)(1)(G), that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the application are unchanged. Such an application shall be approved. If an applicant is seeking a confidential designation for information that is substantially similar to information that was previously deemed confidential by the Commission, the new application need only contain a certification, pursuant to Section 2505(a)(1)(G) of this Article. That certification shall state that the information submitted is substantially similar to the previously submitted information and that all the facts and circumstances remain unchanged. An application meeting this criteria will be approved.~~

(5) Automatic Designation. Information submitted by a private third party shall be designated confidential without an application for confidentiality ~~where if~~ the requirements ~~enumerated in of~~ subsections (a)(5)(A) and (B) of this ~~S~~section are met. Failure to meet these requirements shall result in the Executive Director returning the submittal to the entity ~~submitting it~~.

(A) The entity submitting the information shall label each individual item of the submittal that is entitled to be designated confidential.

(B) The entity submitting the information shall attest under penalty of perjury, that the information submitted has not been previously released and that it falls within one of the following categories:

1. Information that is derived from energy consumption metering, energy load metering research projects, or energy surveys, ~~provided by utilities, natural gas retailers, or electric service providers under Section 1343 or 1344 of Article 2 of Chapter 3, conducted by mail, telephone or on-site inspection~~ and that is one or more of the following:

a. for the residential customer sector and the commercial customer sector – customer identifiers, energy consumption, and any other information that could allow a third party to uniquely identify a ~~an individual-specific~~ respondent;

b. industrial major customer sector – all information;

c. survey design information – all information used to design a survey, stratify billing records, devise a sample scheme, select a sample, sample specific end-users for participation in a survey or a pre-test of a questionnaire or interview form.

2. Energy sales data provided by utilities, natural gas retailers, or electric service providers, under Section 1306 or 1307 of Article 1 of Chapter 3, if the data is at the greatest level of disaggregation required therein.

3. Average commodity energy price data provided by utilities, natural gas retailers, or electric service providers, under [Section 1306 or 1307 of Article 1 of Chapter 3](#), if the data is at the greatest level of disaggregation required therein.

4. Fuel cost data provided for individual electric generators under Section 1304 of Article 1 of Chapter 3.

~~5. Fuel price for individual electric power plants or individual electric generators.~~

[65.](#) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

[76.](#) Information provided by a system operator to the Commission under the provisions of Public Utilities Code section 398.3(b).

[7. Electric power plant name, nameplate capacity, voltage at which the power plant is interconnected with a UDC system or transmission grid, address where the power plant is physically located, power plant owner's full legal name and address or longitude and latitude, if power plant is privately owned and its identity as a power plant is not public knowledge, \(e.g., backup generator or solar installation at residence or business\) under Section 1304 of Article 1 of Chapter 3.](#)

[\(6\) Failure to request confidentiality at the time a record is submitted to the Commission does not waive the right to request confidentiality later; however, once a record has been released to the public, the record can no longer be deemed confidential. Although a record designated as confidential shall remain confidential during the application and appeal process, subject to the provisions of Section 2507\(b\) of this Article, the application itself is a public document and can be released.](#)

(b) Other Public Entities. When another state or local agency possesses ~~es~~ information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, or the Freedom of Information Act, the Commission, the Executive Director, or the ~~General~~Chief Counsel may request and the agency ~~may~~ submit the information to the Commission without an application for confidential designation. The Commission shall designate this information confidential.

(c) Commission Generated Information

(1) The Executive Director in consultation with the Chief Counsel, may designate information generated by Commission staff as confidential under the Public Records Act. ~~Such determination~~A confidential designation made in this manner shall be summarized in the agenda for the next Commission Business Meeting. Any private third party or ~~other~~ public entity may request to inspect or copy ~~such these confidential~~ records by filing a petition pursuant to Ssection 2506 of this Article.

(2) Contracts and Proposals

(A) Information received by the Commission in response to a solicitation shall be kept confidential by the Commission and its evaluators ~~prior to~~before the posting of the notice of the proposed award. The solicitation document shall specify what confidential information the proposal may contain ~~in the way of confidential information~~ and how that confidential information will be handled after the posting of the notice of the proposed award.

(B) The Executive Director, in consultation with the Chief Counsel, may designate certain information submitted under a contract as confidential in accordance with the Public Records Act or other provisions of law. ~~Such a~~The designation and its basis shall be in writing and contained in the contract governing the submittal of the information or in a separate statement. ~~Any such~~The contract or written statement shall also state exactly what information shall be designated confidential, how long it shall remain confidential, the procedures for handling the information, and all other matters pertinent to the confidential designation of the information.

(3) All data generated by the Commission that is the same type as the data described in Section 2505(a)(5)(B) of this Article shall be kept confidential by the Commission.

(d) All documents designated confidential pursuant to this Ssection shall be treated as confidential by the Commission except as provided in Section 2507.

(e) Every three months, the Executive Director shall prepare a list of data designated confidential pursuant to this Ssection during the previous three months. The Executive Director shall give the list to each Commissioner. The list shall also be made available to ~~members of~~ the public upon request.

NOTE: Authority cited: Section 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25321, and 25364, Public Resources Code.

HISTORY:

1. Amendment filed 12-16-81; effective thirtieth day thereafter (Register 81, No. 51).
2. Amendment filed 7-6-98; operative 8-5-98 (Register 98, No. 28).
3. Amendment of subsection (a)(5)(B)1., repealer of subsection (a)(5)(B)4., new subsections (a)(5)(B)1.a.-(a)(5)(B)5., subsection renumbering, amendment of subsection (c) and new subsection (c)(3) filed 2-23-2001; operative 2-23-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 8).

§2507. Disclosure of Confidential Records.

(a) No confidential record shall be disclosed except as provided by this Ssection or Section 2506, unless disclosure is ordered by a court of competent jurisdiction.

(b) No record ~~which that~~ is the subject of a pending application or appeal shall be disclosed except as provided by this Ssection or Section 2506 and any request to copy or inspect a document ~~which that~~ is the subject of a pending application shall be subject to the requirements of Section 2506.

(c) The Executive Director may disclose records determined confidential pursuant to Section 2505 or Section 2506 to:

(1) Commission employees whose Commission work requires inspection of the records; ~~;~~

(2) Persons under contract to the Commission whose work for the Commission requires inspection of the records and who agree in a contract to keep the records confidential; ~~and;~~

(3) Other governmental bodies, and state-created private entities, such as the California Independent System Operator, ~~and the California Power Exchange, which that have a need for~~ the records related to perform their official functions and ~~which that~~ agree to keep the records confidential and to disclose

the records only to those ~~employees-employees or contractors~~ whose agency work requires inspection of the records.

(4) ~~Survey responses~~ Data collected in association with customer surveys of the type described in Section 1343 of Article 2 of Chapter 3 and that are not masked or aggregated may be disclosed ~~to~~ the following entities:

(A) Demand side management program administrators, funded through the Energy Efficiency Public Goods Charge (EEPGC) established in Public Utilities Code Section 381(c), ~~that have a which~~ need ~~for the~~ survey responses ~~related to~~ perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need that data for EEGPC program evaluation and planning.

(B) Utilities that opt into collaborative surveys funded by the Commission, or that contribute funds for the implementation of a survey coordinated by the Commission, pursuant to Section 1343(e) of Article 2 of Chapter 3, may have access to ~~the that~~ portion of survey responses ~~of by~~ customers ~~which are~~ included within their ~~franchise~~ service area provided they agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need the data for distribution system planning.

(d) The Executive Director may release records designated as confidential if the information has been masked or aggregated to the point necessary to protect confidentiality. Information described in paragraphs (1) – (4) of this subsection is deemed ~~to have been~~ masked or aggregated to the point necessary to protect confidentiality.

(1) Data provided pursuant to Sections 1306(a)(1) or 1307(a)(1) of Article 1 of Chapter 3 may be disclosed at the following levels of aggregation or higher:

(A) For individual gas retailers or electric service providers, data aggregated at the statewide level by major customer sector;

(B) For the sum of all natural gas retailers or electric service providers, (1) data aggregated at the county level by residential and non-residential groups and (2) data aggregated at the service area, planning area, or statewide levels by major customer sector;

(C) For small UDCs and small LDCs, data aggregated at the service area, planning area, or statewide level by customer sector;

(D) For large UDCs and large LDCs, (1) data aggregated at the county level by residential and non-residential groups and (2) data aggregated at the service area, planning area, or statewide level by customer sector;

(E) For the total sales of the sum of all electric retailers, or the total sales of the sum of all natural gas retailers, data aggregated at the county level by the economic industry groupings used by the California Employment Development Department in its June 2000 Current Employment Statistics survey county reports.

(F) For total consumption by end users (total sales by retailers plus energy generated or produced onsite) data aggregated at the county level by the economic industry groupings used by the California Employment Development Department in its June 2000 Current Employment Statistics survey county reports.

(2) Commodity energy price data provided pursuant to Sections 1306(a)(2) or 1307(a)(2) of Article 1 of Chapter 3 may be disclosed by major customer sector at the following levels of aggregation or higher:

- (A) the sum of all non-utility retailers;
- (B) the sum of utility retailers; and
- (C) the sum of all retailers.

(3) Electric generator fuel cost data provided pursuant to Section 1304(a)(2)(C) and electric generator fuel price data computed from fuel cost and fuel use data reported pursuant to Section 1304(a)(2)(C), may be disclosed if aggregated by fuel type and gas service area or higher, and if the disclosure is made six months beyond-after the end of the month for which prices were reported.

(4) Data of the type described in Section 1343 of Chapter 3, Article 2 and collected in association with customer surveys that are begun after December 8, 2000, of this subsection (4) may be disclosed in the following manner:

(A) Residential customer sector and commercial customer sector survey responses from individual persons or companies may be released after name, address, and other respondent identifiers have been removed, and usage data and responses to specific survey questions that could allow a third party to uniquely identify a n-individual respondent have been masked;

(B) Industrial major customer sector responses from individual companies may not be released. Tabulations of industrial major customer sector survey data may be released only after the data has been aggregated to ensure that information about individual respondents will not be disclosed.

(e) The Executive Director may release records previously designated as confidential in either of the following circumstances:

(1) upon ~~receipt of~~ written permission ~~for such release from~~ by all entities who have the right to maintain the information as confidential; or

(2) under any other circumstances ~~in which~~where the information is no longer entitled to confidential treatment. In ~~the latter this~~ case, the Executive Director shall provide notice of the Commission's intent to release the information to the person-entity who originally submitted the information ~~of his or her intent to release the information~~. An appeal of the decision to release the information may be filed with the Commission within fourteen days of ~~the this~~ notice, ~~and the~~ and the Commission shall issue a decision on ~~such an this~~ appeal within four weeks of its filing.

(f) The Executive Director shall consult with the private third party to whom the confidential designation ~~belongs~~ applies about disclosure under subsections (c) and (d) of this ~~Section of records determined confidential pursuant to Section 2505 or Section 2506~~.

NOTE: Authority cited: Section 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

HISTORY

1. New subsection (e) filed 12-16-81; effective thirtieth day thereafter (Register 81, No. 51).
2. Amendment filed 7-6-98; operative 8-5-98 (Register 98, No. 28).
3. Amendment of subsection (C)(3), new subsections (C)(4), (C)(4)(B), amendment of subsection (d), repealer of subsections (d)(1)-(3), new subsections (d)(1)-(4)(B) and amendment of subsection (f) filed 2-23-2001; operative 2-23-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 8).